

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RODNEY LEE WENNER,

CV. 07-6236-HU

Petitioner,

ORDER

v.

SHARON BLACKETTER,

Respondent.

HAGGERTY, Judge

IT IS ORDERED that petitioner's motion for voluntary dismissal (#15) is GRANTED, and petitioner's petition for writ of habeas corpus (#2) is DISMISSED, without prejudice.

In the event that the decision in *Blakely v. Washington*, 542 U.S. 296 (2004), is later made retroactive to cases on collateral review, petitioner has leave to reopen this case only as to the *Blakely* issues, and the limitation period shall be deemed tolled from the date this Order is signed until sixty (60) days after the date of the decision rendering *Blakely* retroactively applicable.

If *Blakely* is made retroactive and petitioner moves to reopen this case during the above referenced 60-day period, petitioner may

also amend the petition as of right so as to properly plead all *Blakely*-based claims in this court.

The parties agree that the State reserves any and all procedural defenses that may currently exist.

IT IS SO ORDERED.

DATED this 5th day of January, 2009.

/s/ Ancer L. Haggerty_____
Ancer L. Haggerty
United States District Judge